

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

&

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

FRIDAY, THE 16TH MARCH 2007 / 25TH PHALGUNA 1928

WA.No. 359 of 2007()

AGAINST THE JUDGEMENT/ORDER IN WPC.19454/2006 Dated 17/01/2007
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APPELLANT:

1. THE DIVISIONAL FOREST OFFICER,
MALAYATTUR DIVISION, KODANAD.
2. THE FOREST RANGE OFFICER,
KUTTAMPUZHA.

BY GOVERNMENT PLEADER SHRI M.P. PRAKASH

RESPONDENTS:

1. ANNAMMA MATHAI, D/O.LATE MR.MATHAI,
IDAKKARA HOUSE, KOOVAPPARA,
KUTTAMPUZHA, ERNAKULAM DISTRICT.
2. BENNY, DO.

BY ADV. SRI.K.JAJU BABU

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION
ON 16/03/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

J.B. Koshy & T.R. Ramachandran Nair, JJ.

W.A.NO.359 of 2007-A

Dated this the 16th day of March, 2007

JUDGMENT

Koshy, J.

This appeal is filed by the State. The petitioners were assigned 80 cents of land by the Government after reserving right over a teak tree, by the Government. When the tree became very old and partly damaged, the petitioners offered to purchase the same. The officers of the Forest Department have assessed the market value of the timber and directed to the petitioners to pay the to grant permission to remove the timber. The value fixed by the officers was paid by the petitioners as evidenced by Ext.P1. However, the petitioners were not allowed to remove the timber. Dispute was regarding the price fixed by the officers at that time and petitioners had approached this court. An agreed interim order was passed therein. It is recorded that permission was granted to the petitioner to cut and remove the tree. The dispute was only regarding the market value of the timber. At that time, the Special Govt. Pleader submitted that value fixed by the officers is much below the market value and the following interim order was passed on 15.9.2006 on consent.

“The learned Special Government Pleader (Forest) has filed a statement and additional statement to the effect that a value fixed by the officers is much below the market price of the timber, in respect of which proceedings have been initiated against the officers. In the above circumstances, the teak wood tree cannot be released to the petitioners unless they pay the market value, Government Pleader submits. In view of the dispute regarding the market value of the timber, I deem it necessary to get the market value ascertained by an independent entity. Both sides agree that the Director, Kerala Forest Research Institute, Peechi which is a Government of Kerala Institution would be the proper independent entity to do the same. The counsel for the petitioners submits that the value of the tree is to be ascertained as a standing tree and not as timber. According to him, it is to be assessed as per Ext.P4 guidelines. This is disputed by the learned Government Pleader. In the above circumstances, I direct the Director of Kerala Forest Research Institute, Peechi to get the value of the tree in question assessed both as per market value and as per Ext.P4 and submit his report thereon separately to this court. He may also submit in his report the value of the timber as standing tree, if it can possibly be ascertained, since the tree has already been cut. The Director of Kerala Forest Research Institute, Peechi shall submit his report within a period of three weeks from the date of receipt of a copy of this order.”

2. On the basis of the above order, Director, Kerala Forest Research Institute, Peechi filed a report. No objection was filed regarding the report. The highest value assessed by the scientist is Rs.5,38,000/- and the other two values being Rs.5,06,000/- and Rs.3,99,000/-. It was also stated in the report that first portion of the timber from the base with 5.8 meter length is defective with big holes and only 30% is recoverable. When the final judgment was passed, the case came up before another learned judge and the learned judge was of opinion that the highest value fixed should be paid,

i.e. Rs.5,38,000/-. However, the learned judge found that full market value takes in all taxes and therefore the respondents were directed to rework net cost by excluding 12.5% towards VAT and 5% towards forest development tax. The apparent reason is that the value was fixed by the scientist without including tax. In the impugned judgment it is stated as follows:

“Therefore, I do not find anything wrong in petitioner cutting the tree after depositing the amount demanded. Having regard to the quality of the timber revealed from the valuation report, I feel the highest value should be paid, that is Rs.5,38,000/-. However, full market value takes in all taxes and therefore respondents are directed to rework net cost by excluding 12.5% towards VAT and 5% towards forest development tax and recover from the petitioner cost and tax separately totaling Rs.5,38,000/-. The payment already made will be adjusted and balance will be paid by the petitioner within two weeks from today.”

3. It is true that Rule 3 of Kerala Forest (Preservation, Reproduction and Disposal of Trees and Timber belonging to Government but grown on lands in the occupation of private persons) Rules 1975 provides that Teak, Rosewood, Ebony and Sandalwood shall be excluded from being sold to the occupants. Under the Kerala Forest (Prohibition of Felling of Trees standing on land temporarily or permanently assigned) Rules, 1995 at clause (vi), it is stated that such trees can be removed only with the permission. Under the above rules, permission can be given by the Government. It is recorded in the interim order that petitioners requested to remove the tree

and officers of the Forest Department have assessed the market value and allowed them to remove the tree after payment of the market value. Therefore, violation of the provisions of the rules cannot be now contended. Whatever may be that, it was agreed as can be seen from the order dated 15.9.2006 that market value can be fixed by the Director, Kerala Forest Research Institute, Peechi and after payment of the market value, it can be removed. The highest market value fixed was accepted by the learned single judge as can be seen from the judgment. On the peculiar facts of the case and agreement recorded by the learned single judge, no other order can be made.

4. The major question in the writ appeal is regarding the market value of the timber. Now the market value is fixed on an agreement between the parties and assessed by the head of a Kerala Government Institution has fixed the market value. He is an impartial person and the highest value was adopted. Therefore, we see no ground to interfere in the judgment of the learned single judge. However, we feel that there was no reason to exclude VAT and FDT from the above amount because market value of the timber was fixed by the scientist after taking into account various datas. From the report it cannot be see that tax amount was not included which fixed the value of the timber. Therefore, the only change to be required is that the

writ petitioners have to pay VAT and FDT which comes to Rs.97,513/-.
That also should be paid by the petitioners before removal of the tree.

With the above alteration in the impugned judgment, the writ appeal is disposed.

(J.B. Koshy, Judge.)

(T.R. Ramachandran Nair, Judge.)

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